



**IT IS ORDERED** as set forth below:

*James E. Massey*

**Date: January 29, 2013**

James E. Massey  
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

\_\_\_\_\_|  
IN RE: CASE NO. 12-58761

Harold A. Shaw,  
CHAPTER 7

Debtor. JUDGE MASSEY

\_\_\_\_\_|

Harold A. Shaw,  
Plaintiff,  
v. ADVERSARY NO. 12-5396

Public Storage,  
Defendant.

\_\_\_\_\_|

ORDER ABSTAINING FROM HEARING THIS ADVERSARY PROCEEDING

In this adversary proceeding, Plaintiff Harold Shaw, who is the debtor in this bankruptcy case, seeks a judgment against Defendant for damages for conduct that the title of the complaint describes as theft by conversion, fraud and theft by deception. Debtor filed this Chapter 7 case

on April 3, 2012 and filed this adversary proceeding on August 3, 2012. As of that date, Debtor lacked standing to bring this adversary proceeding because the claims asserted, if they exist, arose prior to the petition date and were therefore property of the Debtor's bankruptcy estate. The day before, August 2, 2012, the Chapter 7 Trustee filed a report of no distribution indicating that there were no assets in the estate that the Trustee could liquidate to pay creditors. In September 2012, the Trustee abandoned those claims, indicating that she thought they had no net value for the benefit of creditors.

On January 7, 2013, the court entered an order and notice of hearing for January 29, 2013 directing Plaintiff to show cause why the court should not abstain from hearing this adversary proceeding in that it can have no effect on the Debtor's bankruptcy estate or creditors. On January 16, 2013, the court entered an order granting debtor a discharge and closing the case.

Any recovery on the claims asserted in this adversary proceeding would benefit only Mr. Shaw and not his creditors. He has received a discharge of his debts. Although Mr. Shaw argued at the hearing that he wanted to pay at least some creditors, he is free to do so if he is able to recover on his claims in state court.

The resolution of the claim cannot affect the bankruptcy estate and is strictly a dispute between these parties to be resolved in accordance with Georgia law. This Court lacks authority to enter a judgment resolving this dispute absent actual consent of the parties. *Stern v. Marshall*, — U.S. —, 131 S.Ct. 2594, 180 L.Ed.2d 475 (2011). The claims asserted by Mr. Shaw occurred in 2010 according to the complaint. The limitation period for bringing tort actions of this sort is four years in Georgia. Ga. Code Ann. § 9-3-31 and 32. Hence, Mr. Shaw could still sue on these claims in state court.

Mr. Shaw stated at the hearing that he preferred to litigate in federal court, intimating that he thought he could not get a fair hearing in state court, but he also stated that he had obtained a ruling favorable to him in state court. He was unable to show how the continuation of this proceeding in this court could serve any bankruptcy purpose. Because Mr. Shaw would be the only person to benefit by a favorable outcome to him in this proceeding and because the issues are governed only by Georgia law, it is in the interest of justice and respect for state law that this court abstain pursuant to 28 U.S.C. § 1334(c)(1).

Accordingly, it is ORDERED that the court ABSTAINS from hearing this adversary proceeding pursuant to 28 U.S.C. § 1334(c)(1) and that this adversary proceeding is DISMISSED without prejudice.

The Clerk is directed to serve a copy of this Order and Notice on Plaintiff and on counsel for Defendant.

\*\*\*END OF ORDER\*\*\*